



that a “party plaintiff must have a real, direct, present and substantial right or interest in the subject matter of the controversy”).

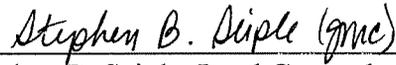
Furthermore, the assertion of one’s *own* legal rights and interests must be demonstrated and the claim to relief will not rest upon the legal rights of third persons. *Warth v. Seldin*, 422 U.S. 490, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975). Constellation has not demonstrated that it has any present interests or legal rights at stake in this proceeding. The Columbia penalties at issue were billed to end use customers. None of the Columbia penalties were billed to Constellation. Constellation is attempting to rest upon the legal rights of end use customers who are not parties to this proceeding. Constellation fails to demonstrate its own interest and relies solely on the claims of third parties to assert an interest.

Constellation purports to act on behalf of Columbia’s end use customers who are also Constellation customers. However, even if it is possible that Constellation could make such an assertion that it is acting in a representational capacity, each injured party (end use customer) would be indispensable to the proceeding for its proper resolution, and Constellation’s involvement would then be moot.

The Commission has similar requirements for standing as that of the Kentucky Supreme Court. The Commission requires that “every action shall be prosecuted in the name of the real party in interest....” *In the Matter of: McGinnis v. GTE South, Inc.*, PSC Case No. 99-495, Order (February 14, 2000). *See also, In the Matter of the Adjustment of Gas Rates of the Union Light, Heat and Power Company*, PSC Case No. 2001-092, Order (September 13, 2001); C.R. 17.01. In the present proceeding, the real parties in interest are the end use customers to whom penalties were billed; Constellation has no real interest in the present proceeding and therefore lacks standing.

Because Constellation does not have standing its Complaint should be dismissed.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Dismiss of Columbia Gas of Kentucky, Inc. was served upon the parties on the attached Service List by regular U.S. Mail this 1st day of July, 2005.

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